

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Weber State University	)	NAL/Acct. No. MB-201741410007
	)	FRN: 0013532817
Application for Renewal of License	)	Facility ID No. 71394
KWCR-FM, Ogden, Utah	)	File No. BRED-20130603BDZ
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 13, 2017****Released: June 14, 2017**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. We have before us an application (Renewal Application) filed by Weber State University (Weber State) to renew the license of noncommercial educational FM station KWCR-FM, Ogden, Utah (Station). Also before us are a Petition to Deny the Renewal Application (Petition) filed by Donald Lynn Hullinger (Hullinger) and an Informal Objection to the Renewal Application (Objection) filed by Jeniffer Rost (Rost).<sup>1</sup> For the reasons discussed below, we grant in part and otherwise deny the Petition, deny the Objection, and adopt the attached Consent Decree, which resolves issues raised during our review of the Renewal Application.

**II. BACKGROUND.**

2. With the exception of broadcasts made on October 31, 2016, the Station has been silent since November 3, 2015.<sup>2</sup> Prior to its silence, the Station had been operating with temporary facilities.<sup>3</sup> This was necessitated by the demolition of the dormitory on which the Station's tower and transmitter were located.<sup>4</sup> While operating with these temporary facilities, Weber State timely filed the Renewal Application. Hullinger then filed the Petition and Rost filed the Objection. Both Hullinger and Rost allege that the Station has broadcast indecent, profane and possibly obscene material. Both also assert that the Station's programming has failed to serve the public interest. Hullinger makes a number of additional allegations related to violations of the Commission's rules (Rules) and policies governing underwriting announcements, the emergency alert system (EAS), maintenance of a public inspection file

<sup>1</sup> Both the Petition and the Objection were filed on August 14, 2013.

<sup>2</sup> See File Nos. BLSTA-20151106EOW, BLESTA-20160526ABH, BLSTA-20161107ACE; *Weber State University*, Letter Order (MB Nov. 23, 2016); *Weber State University*, Letter Order (MB Dec. 4, 2015).

<sup>3</sup> See File Nos. BSTA-20120402AJF, BSTA-20120927ALY, BESTA-20130320ADV, BESTA - 20130918AEG; *Weber State University*, Letter Order (MB April 5, 2012); *Weber State University*, Letter Order (MB Sept. 28, 2012) (*September 2012 Letter*); *Weber State University*, Letter Order (MB Mar. 27, 2013) (*March 2013 Letter*); *Weber State University*, Letter Order (MB Nov. 6, 2013) (*November 2013 Letter*); *Weber State University*, Letter Order (MB Feb. 12, 2014) (*February 2014 Letter*); *Weber State University*, Letter Order (MB May 8, 2014); *Weber State University*, Letter Order (MB Nov. 20, 2014); *Weber State University*, Letter Order (MB May 21, 2015).

<sup>4</sup> BSTA-20120402AJF.

and station logs, main studio staffing, and airing of pre- and post-filing announcements regarding the Application. Further, in additional pleadings, Hullinger asserts he is being harassed by Station “staff or associates,”<sup>5</sup> makes additional allegations related to main studio staffing<sup>6</sup> and asserts that Weber State made false statements in a construction permit application filed in April 2014.<sup>7</sup> Weber State responded to these filings on January 13, 2015.<sup>8</sup>

### III. DISCUSSION.

3. Both the Petition and the Objection must, pursuant to Section 309(d) of the Communications Act of 1934, as amended (the “Act”),<sup>9</sup> provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the Application would be *prima facie* inconsistent with Section 309(k) of the Act,<sup>10</sup> which governs our evaluation of an application for license renewal. Under Section 309(k)(1), we are to grant the Application if, upon consideration of the application and pleadings, we find that (1) the Station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations that, taken together, constitute a pattern of abuse.<sup>11</sup> If, however, we find Weber State failed to meet this standard, we may deny the Application, after notice and opportunity for a hearing under Section 309(d) of the Act, or grant the Application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”<sup>12</sup>

#### A. Programming.

4. *Indecency, Profanity and/or Obscenity.* Section 1464 of Title 18 of the United States Code – which the Commission enforces – prohibits the broadcast of obscene, indecent or profane programming.<sup>13</sup> Hullinger and Rost allege that the Station broadcast such material during its most recent license term. Hullinger references complaints that he filed with the Commission regarding the Station’s broadcasts.<sup>14</sup> Both he and Rost also allege that the lyrics of a song broadcast on April 4, 2013, and the content of a discussion aired on June 26, 2013 were indecent.<sup>15</sup> Rost further alleges that another song broadcast in May 2010 contained profanity.<sup>16</sup> We do not rule on the merits of Hullinger’s or Rost’s

<sup>5</sup> Hullinger makes this allegation in an Addendum to Petition to Deny Renewal filed February 20, 2014.

<sup>6</sup> Hullinger makes this allegation in a Supplement to Petition to Deny filed July 21, 2014.

<sup>7</sup> *Id.* at 2-3.

<sup>8</sup> *Letter from Davina S. Sashkin, Counsel, Weber State University, to Peter H. Doyle, Chief, Audio Division, Media Bureau* (dated Feb. 12, 2015) (Weber State Response). Hullinger submitted a response to this letter on March 2, 2015, which largely reiterates his previous allegations. *Letter from Donald Lynn Hullinger, Jr., to Peter H. Doyle, Chief, Audio Division, Media Bureau* (dated Mar. 2, 2015).

<sup>9</sup> 47 U.S.C. § 309(d).

<sup>10</sup> *Id.*, § 309(k). See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff’d sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *reh’g denied* (D.C. Cir. Sept. 10, 1993).

<sup>11</sup> 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described in the text by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

<sup>12</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>13</sup> 18 U.S.C. § 1464.

<sup>14</sup> Petition at 1-2.

<sup>15</sup> Petition at 2-3; Objection at 2.

<sup>16</sup> Objection at 1.

allegations but have reviewed the facts presented in their pleadings and conclude that, even if a violation were adjudicated based on these facts, such a violation would not justify denial or designation of the Application or demonstrate a pattern of non-compliant behavior.

5. *Public Affairs Programming.* Hullinger and Rost assert that the Station “has a serious lack” of public interest programming.<sup>17</sup> Both acknowledge that the Station plays PSAs “at every stop set,” broadcasts news segments and plays music from local artists.<sup>18</sup> However, Hullinger and Rost state that the Station does not broadcast news segments “with any consistency and does not always include stories that address issues that face the local community.”<sup>19</sup> They further allege that the Station does not broadcast Spanish-language programming “with any consistency”<sup>20</sup> and Hullinger asserts that the local music consists of “the same few songs from garage bands.”<sup>21</sup>

6. While we recognize Hullinger’s and Rost’s concerns about the quality of the Station’s programming, the First Amendment to the Constitution and Section 326 of the Act prohibit the Commission from exercising any power of censorship over broadcast station programming.<sup>22</sup> Licensees are entitled to broad discretion in the scheduling, selection, and presentation of programming.<sup>23</sup> This is particularly so with regard to the programming decisions of NCE stations.<sup>24</sup> The Commission historically “has had the appropriately limited role of facilitating the development of the public broadcasting system rather than determining the content of its programming.”<sup>25</sup> For these reasons, we find that Hullinger and Rost have not raised a substantial and material question of fact calling for further inquiry regarding the Station’s public affairs programming.

7. *Underwriting Announcements.* Pursuant to Section 399b of the Communications Act of 1934, as amended, and Section 73.503(d) of the Rules, NCE radio stations may not air advertisements, *i.e.*, promotional announcements on behalf of for-profit entities in exchange for any remuneration.<sup>26</sup> Hullinger alleges that the Station broadcast unauthorized commercial announcements, in violation of the law and rules governing underwriting announcements, and cites complaints that he filed with the Commission regarding these announcements.<sup>27</sup> We do not rule on the merits of Hullinger’s allegations

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<sup>17</sup> Petition at 5-6; Objection at 3.

<sup>18</sup> *Id.*

<sup>19</sup> Petition at 6. *See also* Objection at 3. Rost also states that the Station has “a really conservative slant to their news most of the time.” *Id.*

<sup>20</sup> Petition at 6; Objection at 3.

<sup>21</sup> Petition at 6.

<sup>22</sup> U.S. CONST. amend. I; 47 U.S.C. § 326 (“Nothing in [the] Act shall be understood or construed to give the Commission the power of censorship over radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated ... by the Commission which shall interfere with the right of free speech by means of radio communication”).

<sup>23</sup> *See, e.g., National Broadcasting Company v. FCC*, 516 F.2d 1101, 1112-1113, 1119-1120, 1172 (D.C. Cir. 1974), *cert denied sub nom. Accuracy in Media Inc. v. National Broadcasting Company*, 424 U.S. 910 (1976); *see also Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 124 (1973); *Hunger in America*, Memorandum Opinion and Order, 20 FCC 2d 143, 150-151 (1969).

<sup>24</sup> *Pittsburg State University*, Letter Order, 22 FCC Rcd 12983, 12985 (MB 2007).

<sup>25</sup> *Id.*, quoting *Revision of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees*, Notice of Proposed Rule Making, 87 FCC 2d 716, 732 para. 36 (1981); *see also License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401 para. 7 (MB 1993) (licensees have broad discretion over programming decisions).

<sup>26</sup> 47 U.S.C. § 399b; 47 CFR § 73.503(d).

<sup>27</sup> Petition at 3-4.

but have reviewed the facts presented in his pleadings and conclude that, even if a violation were adjudicated based on these facts, such a violation would not justify denial or designation of the license renewal application or demonstrate a pattern of non-compliant behavior.

### **B. Main Studio Staffing**

8. The Commission requires that the Station maintain a main studio. Among other things, this entails maintaining a “meaningful management and staff presence” at the studio.<sup>28</sup> The Commission has indicated that, for management and staff presence to be meaningful, management and staff must be present at the studio on a full-time basis during normal business hours.<sup>29</sup>

9. Hullinger alleges that the station’s main studio was not staffed during “normal business hours.”<sup>30</sup> He indicates that he attempted to visit the Station’s main studio on three occasions in June 2013 and on five occasions in July 2013 but found the studio closed and inaccessible “the majority of the time.”<sup>31</sup> He also states that he has been “collecting evidence” regarding the Station’s failure to adequately staff its main studio, and indicates he attempted to visit the main studio on July 11, 2014, but found the main studio closed. Hullinger submits photographs of the main studio’s exterior on that date and other dates.

10. Weber State disputes Hullinger’s claim. It states that the Station is fully staffed during the university’s Fall, Spring and Summer semesters.<sup>32</sup> Weber State also argues that the photographs submitted by Hullinger “do not determinatively demonstrate that KWCR-FM was closed, but rather portray the front door being closed and nobody visible from the front windows.”<sup>33</sup> It explains that the Station’s “main studio consists of several offices, including the General Manager’s and Program Director’s offices, which are not visible from the vantage point indicated in the photographs.”<sup>34</sup> Weber State suggests this is why Hullinger thought the studio was unattended when it actually was staffed. We find this explanation and Weber State’s staffing claims credible. Accordingly, we find that Weber State has rebutted Hullinger’s allegations regarding main studio staffing.

### **C. Renewal Filing Announcements**

11. A licensee filing a renewal application must air pre-filing announcements “beginning on the first day of the sixth calendar month prior to the expiration of [its] license, and continuing to the date on which the application is filed.”<sup>35</sup> Similarly, a licensee filing a renewal application must air post-filing announcements “[d]uring the period beginning on the date on which the renewal application is filed to the

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<sup>28</sup> *Main Studio and Program Origination Rules (Clarification)*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026 para. 24 (1988).

<sup>29</sup> *Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616 n.2 (1991).

<sup>30</sup> Petition at 5; Supplement at 1-2.

<sup>31</sup> Petition at 5.

<sup>32</sup> Weber State Response at 2. Specifically, Weber State indicates that, during its Fall and Spring semesters, the Station’s main studio is staffed with a student General Manager, a student Program Director, a faculty advisor and volunteer student DJs. It also states that, during the Summer semester, the Station is staffed by a General Manager and a paid student Program Director, in addition to student volunteers.

<sup>33</sup> *Id.* at 3.

<sup>34</sup> *Id.* at 3-4.

<sup>35</sup> 47 CFR § 73.3580(d)(4)(i). The pre-filing announcements must be broadcast on the 1<sup>st</sup> and 16<sup>th</sup> day of each calendar month. *Id.* NCE stations like the Station generally must broadcast at least two of the required announcements between 7 a.m. and 9 a.m. and/or 4 p.m. and 6 p.m. 47 CFR § 73.3580(d)(4)(i)(B)(2) & (3).

sixteenth day of the next to the last full calendar month prior to the expiration of the license.”<sup>36</sup> The purpose of these announcements is to “give public notice to [a station’s] community to ensure that members of the community have an opportunity to file a petition to deny if the members object to the station’s application for renewal.”<sup>37</sup>

12. Hullinger asserts that the Station failed to air these pre- and post-filing announcements.<sup>38</sup> In response, Weber State indicates it has “no records indicating that pre-filing announcements were made.” It disputes Hullinger’s claim that the Station failed to broadcast post-filing announcements but “confirms that the announcements were not made during the specified time of day.” Weber State has since aired a new round of post-filing announcements. While Weber State did not strictly comply with the pre- and post-filing announcements requirements, we believe that its actions—especially its more recent re-broadcast of the post-filing announcements—adequately informed the public of the opportunity to participate in the renewal process. Thus, we admonish Weber State to be attentive to these requirements in the future but will not take any further enforcement action.

#### **D. Character Qualifications.**

13. In evaluating a licensee’s character qualifications, the Commission considers misconduct which violates the Communications Act or a Commission rule or policy, and certain adjudicated non-FCC misconduct which demonstrates the proclivity of an applicant to deal truthfully with the Commission and to comply with our rules and policies.<sup>39</sup>

14. *FCC Misconduct.* Hullinger asserts that Weber State may have lied to the Commission in a construction permit application (Permit Application) filed on April 30, 2014.<sup>40</sup> Hullinger states that the Permit Application was not filed immediately after it was signed by Weber State and its engineer and questions why the filing was delayed.<sup>41</sup> Hullinger, however, does not draw any connection between this delay and Weber State’s alleged dishonesty. Accordingly, we do not consider this allegation further.

15. We likewise find no merit to Hullinger’s argument that Weber State made conflicting statements about its intent to construct at the site specified in the Permit Application and about the overall tower height above ground level.<sup>42</sup> Staff already considered and rejected his allegations regarding the site specified in the Permit Application. We affirm staff’s determination that the fact that Weber State had not

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<sup>36</sup> 47 C.F.R. § 73.3580(d)(4)(ii). These announcements also must be broadcast on the 1st and 16th day of each calendar month. *Id.* NCE stations must make at least three of the required announcements between 7 a.m. and 9 a.m. and/or 4 p.m. and 6 p.m., at least one announcement between noon and 4 p.m., and at least one announcement between 7 p.m. and midnight. 47 C.F.R. §§ 73.3580(d)(4)(ii)(B)(2) & (3).

<sup>37</sup> *Designated Market Areas: Report to Congress Pursuant to Section 109 of the STELA Reauthorization Act of 2014*, Report, 31 FCC Rcd 5463, 5468 para. 12 (MB 2016). *See also Revision of the Public Notice Requirements of Section 73.3580*, Notice of Proposed Rulemaking, 20 FCC Rcd 5420, 5421 para. 3 (2005) (stating that Section 73.3580 of the Rules is “designed to promote public participation in the broadcast licensing process”).

<sup>38</sup> Hullinger states that he monitored the station on the dates and times that the announcements should have been broadcast and heard no pre- or post-filing announcements broadcast by the Station. Petition at 4-5 (stating that Hullinger monitored the Station’s broadcasts from 7 to 9 a.m. and 4 to 6 p.m. on April 1, April 16, May 1, May 16, June 1, June 3, June 4, July 1, and July 16, 2013, and from 7 to 9 a.m. and 4 p.m. to 12 a.m. on June 16 and August 1, 2013).

<sup>39</sup> *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179, 1190-91 para. 23 (1986).

<sup>40</sup> Supplement at 2-3. Staff dismissed the Permit Application for failure to comply with Section 73.509 of the rules. *Weber State University*, Letter Order (MB dated Nov. 14, 2014); *Weber State University*, Letter Order (MB dated May 30, 2014).

<sup>41</sup> Supplement at 2.

<sup>42</sup> Supplement at 2-3.

made a decision about a permanent site for the Station was “not inconsistent with the filing for the proposed construction permit site.”<sup>43</sup> We also conclude that the most that can be read into Hullinger’s allegations regarding tower height is that Weber State had not made a decision about tower height or made an error in its filing.

16. Finally, we reject as speculative, Hullinger’s allegation that, without the Permit Application on file, Weber State could not have shown substantial progress toward restoration of licensed operation in its next STA request.<sup>44</sup> At the time Weber State filed the Permit Application, staff already had granted three extensions of the STA. These extensions were granted despite Weber State indicating that it had not made a final determination on a new location for the Station’s antenna.<sup>45</sup> Weber State had no reason to fear denial of its next request to extend the STA. To the extent Hullinger implies that the need to seek an extension of the STA provided Weber State with a motive for deceiving the Commission, we reject this position.

17. *Non-FCC Misconduct.* Hullinger alleges that Weber State has “harassed” him “in an attempt to intimidate him into withdrawing his petition.”<sup>46</sup> He submits copies of two threatening letters that were left on his vehicle on January 26, 2014, and February 9, 2014. The letters demanded withdrawal of the Petition. We decline to consider Hullinger’s allegations regarding non-FCC misconduct for two reasons. First, Hullinger has proffered no evidence that anyone at all has been convicted of a crime related to these letters. It is well established that “[t]he Commission normally will not act on mere allegations of non-FCC misconduct prior to adjudication by a tribunal of competent jurisdiction.”<sup>47</sup> Second, even if the Commission did consider unadjudicated non-FCC misconduct, Hullinger offers no evidence that the letters were authored by anyone affiliated with the Station.

#### **E. Consent Decree.**

18. As part of this Order, we are adopting a Consent Decree entered into by the Media Bureau (Bureau) and Weber State. The Consent Decree resolves issues related to Weber State’s violation of the Commission’s rules governing public inspection files, EAS and station logs. The Consent Decree requires that Weber State pay a civil penalty. It also stipulates that Weber State violated the public inspection file, EAS and station log rules. For these violations, Weber State will pay a civil penalty to the United States Treasury of nine thousand three hundred dollars (\$9,300). Weber State will also implement a three-year compliance plan to avoid future violations of the Rules.

19. We conclude that nothing in the record before us creates a substantial or material question of fact whether Weber State possesses the basic qualifications to be a Commission licensee. After reviewing the terms of the Consent Decree, we find that the public interest would be served by its approval and by terminating the Bureau’s investigation of Weber State’s violations of the Rules in connection with the Petition, subject to the terms of the Consent Decree. We note that, given Weber

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<sup>43</sup> *Weber State University*, Letter Order at n.2 (MB May 20, 2014).

<sup>44</sup> Supplement at 2.

<sup>45</sup> *September 2012 Letter* at 1-2; *March 2013 Letter* at 1-2; *November 2013 Letter* at 1-2. In fact, staff previously rejected Hullinger’s argument that Weber State had failed to make substantial progress toward restoring the Station’s licensed facilities and thus should not have its STA to operate with temporary facilities extended. *February 2014 Letter* at 1-2 (noting “[i]t is generally preferable to keep a station operating with temporary facilities – and thus maintain service to the public – while the licensee works out a permanent solution” and finding Hullinger has failed to provide any “recent facts or circumstances to support a conclusion that the licensee is not pursuing a solution”).

<sup>46</sup> Addendum at 1.

<sup>47</sup> *Mayor Maurice A. Brown*, Letter Order, 24 FCC Rcd. 7632, 7636 (MB 2009).

State's acknowledgment that it did violate the rules governing public inspection files, EAS and station logs, we grant the Petition in part. However, we otherwise deny the Petition.

**IV. CONCLUSION/ACTIONS.**

20. IT IS ORDERED that the Petition to Deny Renewal filed by Donald L. Hullinger on August 14, 2013, IS GRANTED IN PART AND OTHERWISE DENIED.

21. IT IS FURTHER ORDERED that the Addendum to Petition to Deny Renewal and Supplement to Petition to Deny, filed by Donald L. Hullinger on February 20, 2014, and July 21, 2014, respectively, ARE DENIED.

22. IT IS FURTHER ORDERED that the Informal Objection filed by Jeniffer Rost on August 14, 2013, IS DENIED.

23. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,<sup>48</sup> and by the authority delegated by Sections 0.61 and 0.283 of the Commission's rules,<sup>49</sup> the Consent Decree attached hereto IS ADOPTED.

24. IT IS FURTHER ORDERED that the investigation by the Media Bureau of the matters noted above IS TERMINATED.

25. IT IS FURTHER ORDERED that copies of this Order shall be sent by First Class and Certified Mail, Return Receipt Requested, to Weber State University, 1001 University Circle, Ogden, UT 84408, and its counsel, Susan A. Marshall, Esq., Fletcher, Heald & Hildreth, PLC, 1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey  
Chief, Media Bureau

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<sup>48</sup> 47 U.S.C. §§ 154(i).

<sup>49</sup> 47 CFR §§ 0.61, 0.283.

**CONSENT DECREE****I. Introduction**

1. This Consent Decree is entered into by and between the Media Bureau of the Federal Communications Commission and Weber State University, by their respective authorized representatives, for the purpose of resolving certain issues regarding compliance with the Public File Rule, the Station Log Rules, and the EAS Rules, as defined below, that have arisen in the Media Bureau's review of the pending application for renewal of the license for Noncommercial Educational FM Station KWCR-FM, Ogden, Utah.

**II. Definitions**

2. For purposes of this Consent Decree, the following definitions shall apply:

- (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. §151 *et seq.*;
- (b) "Bureau" means the Media Bureau of the Federal Communications Commission;
- (c) "Commission" or "FCC" means the Federal Communications Commission;
- (d) "Compliance Plan" means the processes and procedures developed by the Licensee in an effort to ensure compliance with the Rules, as summarized in the Appendix;
- (e) "EAS Rules" means Sections 11.1 to 11.61 of the Commission's Rules, 47 CFR §§ 11.1-11.61;
- (f) "Effective Date" means the date on which the Bureau releases the Order;
- (g) "Execution Date" means the date on which this Consent Decree is executed by the last of the Parties to do so;
- (h) "Licensee" or "Weber State" refers to Weber State University;
- (i) "Order" means the Order of the Bureau adopting this Consent Decree;
- (j) "Parties" means the Bureau and the Licensee;
- (k) "Public File Rule" means Section 73.3527 of the Commission's Rules, 47 CFR § 73.3527;
- (l) "Renewal Application" means the pending application for renewal of the license for KWCR-FM, Ogden, Utah (File No. BRED-20130603BDZ);
- (m) "Rules" means the Commission's Rules, found in Title 47 of the Code of Federal Regulations;



- (n) "Station" means KWCR-FM, Ogden, Utah (Facility ID No. 71394);
- (o) "Station Log Rules" means Sections 73.1800, 73.1820 and 73.1840 of the Commission's Rules, 47 CFR §§ 73.1800, 73.1820 and 73.1840; and
- (p) "Violations" means violations of the Public File Rule, the Station Log Rules and the EAS Rules.

### III. Background

3. On June 3, 2013, Licensee filed the Renewal Application to renew its license for the Station. The Bureau received a Petition to Deny the Renewal Application on August 14, 2013, and a Supplement to Petition to Deny on July 21, 2014. Among other things, these pleadings alleged that the Station had not complied with the Public File Rule, the Station Log Rules and the EAS Rules. We requested additional information regarding the Station's compliance with these rules on January 13, 2015. On February 12, 2015, Licensee responded. It stated that quarterly issues and programs lists were missing from the Station's public file. Specifically, as of 2013, the most recent issues and programs lists in the public file dated back to 2010. Further, prior to 2010, the Station was not placing these lists in its file on a quarterly basis. Licensee also disclosed that the Station had not maintained station logs since it relocated its antenna and transmitter in April 2012 until prompted by the Petition to Deny allegations when procedures were implemented to maintain such logs. Finally, Licensee disclosed that there was no record of the Station airing the nationwide EAS test on November 9, 2011.

4. Because of the compliance issues raised by these disclosures, the Parties have agreed to enter into this Consent Decree, to which both the Licensee and the Bureau intend to be legally bound.

### IV. Agreement

5. The Parties acknowledge that any proceeding that might result from the compliance issues referenced in Paragraph 3 would be time-consuming and require a substantial expenditure of public and private resources. In order to conserve such resources, to resolve the matter, and to promote Licensee's compliance with the Rules, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

6. The Licensee and the Bureau agree to be legally bound by the terms and conditions of this Consent Decree. Each represents and warrants to the other that its signatory is duly authorized to enter into this Consent Decree on its behalf. The Licensee agrees that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

7. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Licensee and the Bureau concerning the Licensee's Violations at the Station, as discussed herein.

8. In express reliance on the covenants and representations in this Consent Decree, the Bureau agrees that it will not use the Violations in any action against the Licensee, provided that the Licensee satisfies all of its obligations under this Consent Decree. In the event that the Licensee fails to satisfy any of its obligations under this Consent Decree, the Bureau may take any enforcement action available pursuant to the Act and the Rules with respect to each Violation, and/or the violation of this Consent Decree.

9. The Licensee hereby stipulates that the Station violated the Public File Rule, the Station Logs Rules, and the EAS Rules, during periods of the 2005-2013 license term.

10. The Licensee agrees to pay a civil penalty to the United States Treasury in the amount of nine thousand three hundred dollars (\$9,300.00) within thirty (30) days after the Effective Date. Such payment will be made, without further protest or recourse to a *trial de novo*, by a check or similar instrument, wire transfer or credit card and include the Account Number and FRN referenced in the caption above. Regardless of the form of payment selected, a completed FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Licensee will also send electronic notification on the date said payment is made to Heather Dixon at [heather.dixon@fcc.gov](mailto:heather.dixon@fcc.gov). Below are additional instructions that should be followed based on the form of payment selected:

- ☐ Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- ☐ Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- ☐ Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

11. The Bureau agrees to grant the Renewal Application, after the Effective Date, provided that the following conditions have been met: a) Licensee has fully and timely satisfied its obligation to pay the civil penalty as set forth in paragraph 10 of this Decree; and b) there are no issues other than the Violations that would preclude grant of the Renewal Application.

12. The Licensee represents that, in addition to its existing policies and procedures, it has adopted, is currently in the process of implementing, and agrees to abide by the Compliance Plan for the purpose of ensuring compliance with the Rules. Licensee agrees, to the extent that it has not already done so, to implement this Compliance Plan at the Station no later than thirty (30) days after the Effective Date and to keep such Compliance Plan in effect for three (3) years after the Effective Date.

13. The Licensee represents that as of the Execution Date, apart from the missing issues and programs lists noted in paragraph 3, the Station's public file fully complies with the Public File Rule.

14. The Licensee agrees that it is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent that the Licensee fails to satisfy any condition or Commission Rule, in the absence of Commission alteration of the condition or Rule, it will be deemed noncompliant and may be subject to

possible enforcement action, including, but not limited to, revocation of the relief, designation of the matter for hearing, letters of admonishment and/or forfeitures.

15. The Consent Decree will be binding on the Licensee's successors-in-interest and assigns. The Licensee agrees that any future application to assign or transfer control of the Station will include a statement executed by an authorized representative of the proposed assignee or transferee consenting to assumption of the responsibilities and duties set forth in this Consent Decree with regard to the Station.

16. The Licensee waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge the validity of this Consent Decree and the Order, provided the Order adopts the Consent Decree without change, addition or modification.

17. The Licensee agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. Section 504 and 47 C.F.R. Section 1.1501 *et seq.*, relating to the matters discussed in this Consent Decree.

18. The Licensee and the Bureau agree that the effectiveness of this Consent Decree is expressly contingent upon issuance of the Order, provided the Order adopts the Consent Decree without change, addition or modification.

19. The Licensee and the Bureau agree that if the Licensee, the Commission or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither the Licensee nor the Commission will contest the validity of the Consent Decree or Order, and the Licensee and the Commission will waive any statutory right to a *trial de novo* with respect to any matter upon which the Order is based (provided in each case that the Order is limited to adopting the Consent Decree without change, addition, or modification), and will consent to a judgment incorporating the terms of this Consent Decree.

20. The Licensee and the Bureau agree that, in the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it will become null and void and may not be used in any manner in any legal proceeding.

21. This Consent Decree may be signed in counterparts and/or by telecopy and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed by telecopy or by original signatures.

**MEDIA BUREAU  
FEDERAL COMMUNICATIONS COMMISSION**

By: Michelle M. Carey  
Michelle M. Carey, Chief

Date: June 13, 2017

**WEBER STATE UNIVERSITY**

By: Madonne Miner  
Madonne Miner, Provost

Date: June 5, 2017

**APPENDIX****COMPLIANCE PLAN**

Weber State University, or its successor-in-interest, as appropriate, will institute the following procedures to ensure compliance with the Commission's Rules. Unless otherwise provided, all terms defined in the Consent Decree apply to this Compliance Plan.

- I.
  - A. Within 30 days of the Effective Date of this Compliance Plan, Licensee will conduct training for employees and management responsible for Station operations on compliance with Commission Rules applicable to Station operations, including the Public File Rule, the Station Log Rules and the EAS Rules. It will also designate a management-level employee as Compliance Officer responsible for responding to questions by employees responsible for Station operations and consulting with outside counsel familiar with Communications law regarding compliance matters. Additionally, Licensee will conduct refresher training for employees and management responsible for Station operations at least once every twelve (12) months, and will train any new employee involved in the Station's compliance with FCC Rules applicable to Station operations within five (5) days of commencement of his or her duties.
  - B. Appropriate employees and management responsible for Station operations will compile sufficient records of all public affairs and public service programming broadcast by the Station. These records of public affairs and other public service programming will be retained until the Station's next license renewal application has been granted, compiled into quarterly issues/programs lists and such quarterly lists timely placed in the public file of the Station.
  - C. All requisite quarterly issues/programs lists will be signed and dated by their preparer and by a management-level employee before they are placed in the public file.
  - D. Late-filed lists will be reviewed and signed by a management-level employee and accompanied in the Station's public file with a statement indicating the nature of the document, the date placed in the public file, and the reason for the late filing.
  - E. Should the Licensee or management responsible for Station operations learn that the Public File Rule has been violated, any employee responsible will be subject to appropriate disciplinary action, which may include suspension without pay or termination.
- II. Licensee and/or any successor licensee, as appropriate, will conduct annual audits of the Station's compliance with the Public File Rule, the Station Log Rules and the EAS Rules. These audits shall occur on or about the anniversary date of the Effective Date of the Consent Decree. The three-year period will terminate on the successful completion of the third annual audit. The second and third audits will be due on the anniversary of the first audit.
- III. Licensee shall annually submit a sworn certification to the Commission, signed by Licensee, that the Station fully complies with the Public File Rule, the Station Log Rules and the EAS Rules. If the Licensee cannot truthfully make this certification, it shall set forth in detail any instances of noncompliance and describe any corrective measures taken. This report shall be filed within ten (10) days of the completion of the first audit pursuant to Item II above, and on that date yearly thereafter for two additional years. A copy will be served on Peter H. Doyle, Chief, Audio

Division, Media Bureau, Federal Communications Commission and e-mailed to him at [Peter.Doyle@fcc.gov](mailto:Peter.Doyle@fcc.gov).

- IV. This Compliance Plan will be under the direct supervision of Scott Sprenger, Dean or by any member of Weber State University designated by Dean Sprenger, or in the event Dean Sprenger is no longer with Weber State University, by his/her successor or his/her successor's designee. In the event the Station's license is assigned, the Compliance Plan will be under the direct supervision of an individual, with specific knowledge of the Commission's Rules, designated by the new licensee.

